

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE
CHAPTER 81 PRACTICE OF MASSAGE THERAPY

TABLE OF CONTENTS

<u>SUBJECT</u>	<u>CODE SECTION</u>	<u>PAGE</u>
Scope and Authority	81-001	1
Definitions	81-002	1
License Requirements	81-003	3
Temporary License Requirements	81-004	7
Examination Procedures	81-005	9
Continuing Competency Requirements	81-006	10
Renewal	81-007	18
Revocation for Failure to Meet Renewal Requirements	81-008	23
Grounds for Denying, Refusing Renewal or Disciplining a Licensee	81-009	24
Re-Credentiaing	81-010	26
Unprofessional Conduct	81-011	40
Fees	81-012	42
Administrative Penalty	81-013	43
Applications	Available Upon Request	

Title 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

Chapter 81 PRACTICE OF MASSAGE THERAPY

81-001 SCOPE AND AUTHORITY: These regulations apply to the licensing procedures for the profession of Massage Therapy as defined by Neb. Rev. Stat. §§71-1,278 to 71-1,282, and the Uniform Licensing Law.

81-002 DEFINITIONS

Accredited High School means a secondary school accredited by a regional accrediting institution.

Attest/Attestation means that the individual declares that all statements on the application/petition are true and complete.

Board means the Board of Massage Therapy.

Client means any person with whom the massage therapist has an agreement to provide massage therapy.

Completed Application means an application with all of the information requested on the application filled in, the signature of the applicant, fees and all required documentation submitted.

Continuing Competency means to ensure:

1. The maintenance by a credentialed person of knowledge and skills necessary to competently practice massage therapy;
2. The utilization of new techniques based on scientific and clinical advances; and
3. The promotion of research to assure expansive and comprehensive services to the public.

The continuing competency activity may be obtained through one or more of the following types of activities:

1. National Examination;
2. Publication;
3. Jurisprudence Examination;
4. Instructor at a Massage Therapy School;
5. Written Paper on Massage Practice;
6. Practical Examination;
7. Massage School Training;
8. College or University Coursework;
9. Workshops and Lectures (Continuing Education Programs); or
10. Homestudy Programs.

Course of Study and Training in Massage Therapy means a course of not less than 1,000 hours, distributed over a term of not less than 9 months. Such study and training must consist of:

1. 100 hours in each of the following areas:
 - a. Anatomy which may include but is not limited to structure of the human body, study of cells, tissues, bones, muscles, organ systems, histology, embryology, kinesiology, etc.;
 - b. Health Service Management which may include but is not limited to professional ethics, legalities of massage, business practices, promotion, employment opportunities, oral presentations, telephone techniques, marketing plan, sales techniques, resumes, bookkeeping, financial management, insurance coverage, networking, interview techniques, etc.;
 - c. Hydrotherapy which may include but is not limited to history, benefits of water treatment, cryotherapy, body wraps, salt glows, body shampoos, hot packs, steam cabinets, dry brushing, therapeutic modalities, methods of cold application, heat therapy, contrast baths, skin contra-irritants, spas, etc.;
 - d. Hygiene and Practical Demonstration which may include but is not limited to physiology of digestion, weight control, herbal therapy, nutrition, food combining, supplementation, wellness, hygiene principles & practices, CPR, first aid, equipment and sanitation, infectious and contagious disease control, various massage therapy techniques and demonstration, hands-on training, student clinic hours, etc.;
 - e. Massage which may include but is not limited to history of massage, benefits of massage, physiology of massage, equipment and procedures, psychology of massage, interpersonal client contact, relaxation and visualization, proper draping techniques, general guidelines for massage, principles of body massage, etc.;
 - f. Pathology which may include but is not limited to definition of pathology and disease, pharmacology, pathology of body systems, disease entities including cause and effect, blood pressure, pulse monitoring;
 - g. Physiology which may include but is not limited to endocrinology, biochemistry, interaction of hormones to the body's balance and metabolism, function of human body, and organ systems, etc.; and
2. The remaining 300 hours must be obtained in subject areas related to the clinical practice of massage therapy which may include but is not limited to reflexology, deep tissue massage, Swedish massage, sports massage, pregnancy & infant massage, physiology & psychology of exercise, acupressure therapy, management techniques, stress & practices, hands-on-training, review of health histories, documentation, etc.

Department means the Department of Health and Human Services Regulation and Licensure of the State of Nebraska.

Director means the Director of Regulation and Licensure or the Chief Medical Officer if one has been appointed pursuant to Neb. Rev. Stat. § 81-3201, for performance of the duties set out in that statute.

Division means the Credentialing Division of the Department of Health and Human Services Regulation and Licensure of the State of Nebraska.

Evidence of Residency means proof of living within the boundaries of Nebraska, i.e., address, car license, or registered to vote.

Inactive License means the voluntary termination of the right or privilege to practice massage therapy. The licensee retains the right or privilege to represent himself or herself as having an inactive license.

Lapse License means the voluntary termination of the right or privilege to represent oneself as a licensed person and to practice massage therapy.

Licensure Examination means the National Certification Examination for Therapeutic Massage and Bodywork (NCETMB) developed by the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB).

Massage Therapist means a person licensed to practice massage therapy.

Massage Therapy means the physical, mechanical, or electrical manipulation of soft tissue for the therapeutic purposes of enhancing muscle relaxation, reducing stress, improving circulation, or instilling a greater sense of well-being and may include the use of oil, salt glows, heat lamps, and hydrotherapy. It does not include diagnosis or treatment or use of procedures for which a license to practice medicine or surgery, chiropractic, or podiatry is required nor the use of microwave diathermy, shortwave diathermy, ultrasound, transcutaneous electrical nerve stimulation, electrical stimulation of over thirty-five volts, neurological hyperstimulation, or spinal and joint adjustments.

NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172 NAC 81.

Official means issued by and under the original seal of the educational institution.

Program Sponsor means an individual or organization that sponsors continuing competency programs to licensees and requests approval from the Board for those programs.

Verified means sworn to before a Notary Public.

81-003 LICENSE REQUIREMENTS: Any person who wishes to practice massage therapy must obtain a license. The criteria for issuance of licenses and the documentation required by the Department are set forth below.

81-003.01 Initial License

81-003.01A Requirements: An applicant for an initial license must:

1. Have completed a course of study and training in massage therapy as specified in 172 NAC 81-002;
2. Have attained at least the age of 19 years and have good moral character;
3. Have established residence in the State of Nebraska; and
4. Have received a passing score on the licensure examination as set by NCBTMB and approved by the Board.

81-003.01B Application Process: The following must be submitted to the Department:

1. A completed application, on Attachment A attached to these regulations and incorporated by this reference or an alternate form that contains the same information. Only applications which are complete will be considered;
2. An official transcript showing that he/she has completed a course of study and training in massage therapy;
3. Evidence that he/she is at least 19 years of age, such as:
 - a. Driver's license;
 - b. Massage therapy transcript which states date of birth;
 - c. Birth certificate;
 - d. Marriage license; or
 - e. Other similar documentation;
4. If any disciplinary action was taken against the applicant's license by another state, an official copy of the disciplinary action, including charges and disposition;
5. If the applicant has been convicted of a misdemeanor or felony:
 - a. Official Court Record, which includes charges and disposition;
 - b. Copies of arrest records;
 - c. A letter from the applicant explaining the nature of the conviction;
 - d. All addiction/mental health evaluations and proof of treatment; and
 - e. A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation;
6. Evidence of residency in the State of Nebraska;
7. Attestation by the applicant:
 - a. That s/he has not practiced in Nebraska prior to the application of his/her license; or
 - b. To the actual number of days practiced in Nebraska prior to the application of his/her license; and
8. The required license fee.

81-003.01C Pro-rated Fee: When a license will expire within 180 days after its initial

issuance date, the Department will collect \$25, and the Licensee Assistance Program fee of \$1, and the license will be valid until the next subsequent renewal date.

81-003.01D Administrative Penalty/Other Action: An individual who practices prior to issuance of a credential is subject to assessment of an Administrative Penalty pursuant to 172 NAC 81-013, or such other action as provided in the statutes and regulations governing the credential.

81-003.01E Department Decision: The Department will act within 150 days upon all completed applications for licensure.

81-003.01F Withdrawn/Rejected Application: An applicant for a license who withdraws his/her application or whose application is rejected by the Department prior to administration of the examination will be allowed the return of his/her fee, except for an administrative fee of \$25.00 to be retained by the Department.

81-003.02 Reciprocity

81-003.02A Requirements: An applicant for a license to practice massage therapy on the basis of licensure in another jurisdiction must:

1. Have obtained his/her license under standards regulating the practice of massage therapy in the other jurisdiction that are equal to those maintained in Nebraska;
2. Have completed a course of study and training in massage therapy as specified in 172 NAC 81-002;
3. Have had his/her license based on a written examination, the grades given at such examination, and the date the license was issued;
4. Have been actively engaged in the practice of massage therapy under such license for at least 1 of the 3 years immediately preceding application;
5. Have been in active and continuous practice of massage therapy under license issued by examination in the state, territory, or District of Columbia from which s/he comes for at least 1 year; and
6. Have attained at least the age of 19 and have good moral character.

81-003.02B Application Process. The following must be submitted to the Department:

1. A completed application on Attachment A or an alternate form which contains the same information. Only applications which are complete will be considered;
2. An official transcript showing that s/he has completed a course of study and training in massage therapy;
3. Evidence of having attained at least the age of 19, such as:
 - a. Driver's license;

- b. Massage therapy transcript which states date of birth;
 - c. Birth certificate;
 - d. Marriage license; or
 - e. Other similar documentation;
- 4. If any disciplinary action was taken against the applicant's license by another state, an official copy of the disciplinary action, including charges and disposition;
- 5. If the applicant has been convicted of a misdemeanor or felony:
 - a. Official Court Record, which includes charges and disposition;
 - b. Copies of arrest records;
 - c. A letter from the applicant explaining the nature of the conviction;
 - d. All addiction/mental health evaluations and proof of treatment; and
 - e. A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation;
- 6. The required license fee;
- 7. Have the licensing or certifying agency submit to the Department:
 - a. A certification that the applicant is duly licensed or certified, that his/her license or certificate has never been suspended or revoked, and that so far as the record of the agency is concerned, the applicant is entitled to its endorsement on Attachment A3 attached to these regulations and incorporated by this reference or on an alternate form which contains the same information;
 - b. The nature of disciplinary actions, if any, taken against the applicant's license or certificate;
 - c. The date of the applicant's license or certificate;
 - d. The name of the examination on which licensure was based;
 - e. The score attained on the examination;
 - f. Documentation of the requirements for licensure or certification in the other jurisdiction which are currently in effect and which were in effect at the time the license was issued; and
- 8. Attestation by the applicant:
 - a. That s/he has not practiced in Nebraska prior to the application of his/her license;
 - or
 - b. To the actual number of days practiced in Nebraska prior to the application of his/her license.

81-003.02C Board Review: The Board will review the documents submitted to

determine if the applicant's license or certificate issued by the other jurisdiction was based upon standards regulating the profession which are equal to those maintained in massage therapy by Nebraska.

81-003.02D Pro-rated Fee: When a license will expire within 180 days after its initial issuance date, the Department will collect \$25, and the Licensee Assistance Program fee of \$1, and the license will be valid until the next subsequent renewal date.

81-003.02E Administrative Penalty/Other Action: An individual who practices prior to issuance of a credential is subject to assessment of an Administrative Penalty pursuant to 172 NAC 81-013, or such other action as provided in the statutes and regulations governing the credential.

81-003.02F Department Decision: The Department will act within 150 days upon all completed applications for licenses.

81-003.02G Withdrawn/Rejected Application: An applicant for a license who withdraws his/her application or whose application is rejected by the Department prior to administration of the examination will be allowed the return of his/her fee, except for an administrative fee of \$25.00 to be retained by the Department.

81-004 TEMPORARY MASSAGE THERAPY LICENSE REQUIREMENTS

81-004.01 Requirements and Limitations: A graduate of a course of study and training in massage therapy who has met all the requirements for a license except passage of the licensure examination may apply for a temporary license to practice massage therapy in Nebraska, subject to the following requirements and limitations:

1. The temporary license will be valid until the Department receives the results of the licensure examination taken by the temporary licensee;
2. The temporary licensee must practice only under the supervision of a Nebraska licensed massage therapist; and
3. The temporary license will be revoked if the temporary licensee fails the examination.

81-004.02 Additional Requirements: An applicant for a temporary license to practice massage therapy must:

1. Not have previously held a temporary massage therapy license;
2. Not have failed the licensure examination; and
3. Meet all requirements for licensure as a massage therapist in Nebraska as prescribed in 172 NAC 81-003.01 or 81-003.02 except passage of the licensure examination.

81-004.03 Application Process: The following must be submitted to the Department:

1. A completed application on Attachment A or an alternate form which contains the same information. Only applications which are complete will be considered;
2. Evidence of having attained at least the age of 19, such as:
 - a. Driver's license;
 - b. Massage therapy transcript which states date of birth;
 - c. Birth certificate;
 - d. Marriage license; or
 - e. Other similar documentation;
3. Attestation by the applicant:
 - a. That s/he has not practiced in Nebraska prior to the application of his/her license;
or
 - b. To the actual number of days practiced in Nebraska prior to the application of his/her license; and
4. The required temporary license fee.

81-004.04 The Department will act within 150 days upon all completed applications for a temporary license.

81-004.05 Standards for Supervision: The supervisor of a person who holds a temporary massage therapy license is subject to the following standards and conditions:

1. Must be present at the location where the temporary licensee is providing massage therapy services;
2. Must consult with and direct the actions of a person who holds a temporary license to practice massage therapy; and
3. The supervisor must immediately notify the Department when supervision of the temporary licensee is terminated.

81-004.06 License Extension Circumstances: The Department, upon recommendation of the Board, may grant an application for extension of a temporary license when the applicant has applied to retake the licensure examination and shows good cause why such license should be extended. Circumstances which may result in extension of the temporary license may include but are not limited to:

1. Applicant became ill during the licensure examination to the extent he/she could not complete the examination;
2. Applicant had to leave the licensure examination due to inclement weather conditions which caused the applicant to be unable to complete the examination; or
3. Applicant suffered an incapacitating injury prior to the licensure examination which allowed him/her to take the examination but affected his/her ability to perform well on the examination.

84-004.07 License Extension Limitations: A temporary licensee who fails the licensure examination may apply for an extension of his/her temporary license to practice massage therapy, subject to the following requirements and limitations:

1. A temporary license may not be extended beyond 1 year; and
2. An applicant for extension of a temporary license submit a written request for extension, stating the reason(s) for said request.

84-004.08 Department Review: The Department will act within 150 days upon all completed requests for extension of a temporary license.

81-004.09 Temporary License Denial: The Department may deny an application for a temporary license or extension of a temporary license. Circumstances which may result in denial include but are not limited to:

1. Failure to pay the fee for a temporary license or extension of the temporary license;
2. Falsification of any information submitted for the temporary license or extension of a temporary license;
3. Failure to show good cause for extension of a temporary license; or
4. Violation of any of the provisions specified in 172 NAC 81-009 or 81-011.

81-004.10 Notice of Denial: When the Department denies an application for a temporary license or extension of a temporary license, it will send to the applicant by certified mail a notice setting forth the reason for the denial determination. The applicant has 30 days from the date of receipt of the denial notice to make a request to the Department for an appeal. The appeal will be conducted in accordance with 184 NAC 1, Rules of Practice and Procedure for the Department.

81-004.11 Administrative Penalty/Other Action: An individual who practices prior to issuance of a credential is subject to assessment of an Administrative Penalty pursuant to 172 NAC 81-013, or such other action as provided in the statutes and regulations governing the credential.

81-005 EXAMINATION

81-005.01 Eligibility: To take the NCETMB examination, an applicant must submit a completed examination application form and supporting documentation to the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB). The NCBTMB will send the applicant an Examination Eligibility Letter. After the applicant receives the Examination Eligibility Letter s/he will call the testing service to make an appointment to test. The Examination Eligibility Letter will include a list of testing center locations and testing dates.

81-005.02 Procedures: The NCETMB examination will be administered by the testing service on the dates specified by the testing service of each year and the applicant will be

notified of the date, time, place and other information pertinent to administration of the examination by the testing service.

1. The testing service will immediately score the examination and the applicant will receive a copy of the test results before leaving the test center. If the applicant is not successful in passing the examination, he/she will be given directions on how to reapply for a future test.
 - a. The applicant must submit the official score report to the Department with his/her completed application for licensure, or have the testing service submit an official copy of the score report to the Department.
2. An examinee who fails an examination may retake the examination upon payment of the fee to the testing service each time he/she is examined.

81-006 CONTINUING COMPETENCY

81-006.01 General Requirements for License Holder: On or before November 1 of each odd-numbered year, each licensed massage therapist who is in active practice in the State of Nebraska must:

1. Complete 18 hours of approved continuing education during the preceding 24 month period; no more hours than the total number of approved hours offered in Nebraska will be required during this period;
 - a. Effective November 1, 2005, a licensee must complete 24 hours of approved continuing competency hours/credits for the November 1, 2007 biennial renewal and every 2 years thereafter.
2. Submit evidence of continuing competency with the renewal notice.
3. Be responsible for:
 - a. Maintaining certificates or records of credit from continuing competency activities;
 - b. Verifying with the Department that the continuing competency activity is approved by the Board;
 - c. If the licensee is a presenter, maintaining documentation of his/her presentation of an approved continuing competency activities. A presenter may receive credit for only the initial presentation during a renewal period. Credit will not be given for subsequent presentations of the same activity; and
 - d. If applicable, submit an application for waiver of the continuing competency requirement pursuant to 172 NAC 81-007.10B.

81-006.02 The following applies until November 1, 2005: One hour of continuing education credit hours/credits will be awarded for each hour for the following types of programs, provided they have been approved by the Board:

1. Programs relating to the theory or clinical application of theory pertaining to the practice of massage therapy, professional ethics, anatomy, hydrotherapy, CPR, first aid, pathology (which may include the definition of pathology and disease, pharmacology, pathology of body systems, disease entities including cause and effect), and physiology at State and National meetings, i.e., a meeting of the local, state, or National Massage Therapy Association;
2. Formal education courses which relate directly to the theory or clinical application of theory pertaining to the practice of massage therapy, professional ethics, anatomy, hydrotherapy, CPR, first aid, pathology (which may include the definition of pathology and disease, pharmacology, pathology of body systems, disease entities including cause and effect), and physiology;
3. University-sponsored courses relating to the theory or clinical application of theory pertaining to the practice of massage therapy, professional ethics, anatomy, hydrotherapy, CPR, first aid, pathology (which may include the definition of pathology and disease, pharmacology, pathology of body systems, disease entities including cause and effect), and physiology. Continuing education credit will be awarded as follows:
 - a. One semester of academic credit equals 15 continuing education credit hours. One semester credit audited equals 8 hours of continuing education;
 - b. One quarter hour of academic credit equals 10 continuing education credit hours. One quarter credit audited equals 5 hours of continuing education;
 - c. One trimester hour of academic credit equals 14 continuing education credit hours. One trimester credit audited equals 7 hours of continuing education;
4. Homestudy programs may accumulate up to 18 hours of continuing education per biennial renewal period;
5. Educational/training video or audio tapes clearly related to maintaining skills necessary for the safe and competent practice of massage therapy may accumulate up to 18 hours of continuing education per biennial renewal period;
6. Any other types of activity approved by the Board of Massage Therapy; and
7. One hour credit will be awarded for each hour of scientific presentation by a license holder acting as an essayist or lecturer to licensed massage therapists if the program relates to theory or clinical application of theory pertaining to massage therapy, professional ethics, anatomy, hydrotherapy, CPR, first aid, pathology (which may include the definition of pathology and disease, pharmacology, pathology of body systems, disease entities including cause and effect), and physiology and is approved by the Board.

81-006.02A Examples of nonacceptable subject matter for continuing education credit for massage therapy includes, but is not limited to the following:

1. Personal development;
2. Government regulations;
3. Time management;
4. Professional affairs;
5. Human relations; and
6. Tours.

81-006.03 Beginning November 1, 2005, licensees must earn 24 hours/credits through a combination of the following types of activities. Activities must be approved by the Board.

1. A licensee must complete at least 14 hours of approved hands-on continuing education workshops each renewal period (1 hour of attendance = 1 credit). A licensee may earn all 24 hours through hands-on workshops. These hours must meet the following:
 - a. The content of the workshop(s) must be HANDS-ON which is the physical, mechanical, or electrical manipulation of soft tissue for the therapeutic purposes of enhancing muscle relaxation, reducing stress, improving circulation, or instilling a greater sense of well-being and may include the use of oil, salt glows, heat lamps, and hydrotherapy; and
 - b. The agenda must reflect a set period of time for class participation (hands-on practice).
2. A licensee may earn the remaining 10 credits in one or a combination of the following continuing competency activities:
 - a. National Examination. 10 credits will be granted for licensees who successfully pass the examination;
 - b. Publication. The article must be published in a professional health related journal; a newsletter article or letter to the editor does not meet this requirement. 10 credits will be granted;
 - c. Jurisprudence Examination on State Laws (50 question take home test). 3 credits will be granted for licensees who receive a score of 75% or above;
 - d. Instructor at a Massage Therapy School. 1.5 credits will be granted for each hour of teaching up to a maximum of 10 hours;
 - e. Written Paper on massage practice. 7 credits will be granted;
 - f. Practical Examination (must be administered by a Nebraska Licensed Massage Therapy School). 3 credits will be granted;
 - g. Massage School Training / College or University Coursework. 1 hour of training = 1 credit, 1 semester college credit hour = 15 credits, 1 quarter credit = 10 credits up to a maximum of 10 credits;
 - h. Workshops and Lectures (Continuing Education Programs). 1 credit will be

granted for each 60 minutes of participation up to a maximum of 10 credits;
and

- i. Homestudy Programs. Up to a maximum of 10 credits will be granted. Only the following topic areas are acceptable for homestudy credit:
 - (1) Equipment and sanitation;
 - (2) Infectious and contagious disease control;
 - (3) Anatomy;
 - (4) Physiology;
 - (5) Business;
 - (6) Pathology;
 - (7) Hygiene; or
 - (8) Stress Management.

81-006.03A Acceptable Topic Areas: The following are the acceptable topic areas for continuing competency (this does not apply to the mandatory 14 hours of continuing education earned through hands-on workshops or to homestudy):

1. Anatomy – which may include but is not limited to structure of the human body, study of cells, tissues, bones, muscles, organ systems, histology, embryology, kinesiology, etc.;
2. Business – which may include but is not limited to professional ethics, Nebraska Massage Therapy statutes and regulations, business practices, financial management, insurance reimbursement, health histories, etc.;
3. Hydrotherapy – which may include but is not limited to history, benefits of water treatment, cryotherapy, body wraps, salt glows, body shampoos, hot packs, steam cabinets, dry brushing, therapeutic modalities, methods of cold application, heat therapy, contrast baths, skin contra-irritants, spas, etc.;
4. Hygiene - which may include but is not limited to equipment and sanitation, infectious and contagious disease control, etc.;
5. Massage - which may include but is not limited to history of massage, benefits of massage, physiology of massage, equipment and procedures, psychology of massage, interpersonal client contact, relaxation and visualization, proper draping techniques, general guidelines for massage, principles of body massage, reflexology, deep tissue massage, Swedish massage, sports massage, pregnancy & infant massage, etc.;
6. Pathology - which may include but is not limited to definition of pathology and disease, pharmacology, pathology of body systems, disease entities including cause and effect, blood pressure, pulse monitoring;
7. Physiology - which may include but is not limited to endocrinology, biochemistry, interaction of hormones to the body's balance and metabolism, function of human body, and organ systems, physiology & psychology of exercise, etc.; and
8. Other Topic Areas covered on the NCBTMB examination, such as but not limited to: western, non-western, energy work, Chinese medicine, holistic

principles, stress management, CPR, first aid, and acupressure therapy.

81-006.03B Board Attendance: The Massage Therapy Board reserves the right to attend any workshop for assuring compliance with the regulations.

81-006.04 Continuing Education Program Process and Approval

81-006.04A Process: The Board will evaluate applications from program sponsors of continuing education programs or from licensees to determine if approval is to be granted or denied. To be approved, a continuing education program must meet the following criteria:

1. The program must be at least 60 minutes in duration;
2. Beginning November 1, 2005, the program topic must relate to the topic areas listed in 172 NAC 81-006.03, except that the 14 mandatory hours must be TOUCH massage which is the physical, mechanical, or electrical manipulation of soft tissue for the therapeutic purposes of enhancing muscle relaxation, reducing stress, improving circulation, or instilling a greater sense of well-being and may include the use of oil, salt glows, heat lamps, and hydrotherapy;
3. The program's objectives must relate to the specified topic areas;
4. The presenter of the program must be qualified by education, experience, or training;
5. Programs must be open to all massage therapists licensed in Nebraska;
6. The program sponsor must employ a system to obtain feedback and knowledge obtained by the licensee; and
7. The Program Sponsor must issue proof of licensee attendance. Such proof must include:
 - a. Name of the program;
 - b. Date of the program;
 - c. Location of the program;
 - d. Name of the licensee who attended the program; and
 - e. Name of the program sponsor.

81-006.04B Approval: The program sponsor or licensee must submit to the Board an application on Attachment D attached to these regulations and incorporated by this reference or an alternate form which contains the same information. Only applications which are complete will be considered. The following information must be included in the application:

1. A detailed daily agenda which includes:
 - a. Topic names;
 - b. Topic times (beginning and ending); and
 - c. Designated breaks and/lunches (if applicable);

2. A description of program objectives which includes:
 - a. Learner objectives per topic;
 - b. Hours offered for each learner objective;
 - c. Subject matter that corresponds to each objective; and
 - d. Teaching method per topic;
3. A description of the qualifications of each presenter which includes the education, training, and/or experience that qualifies the presenter to teach the program topic;
4. The number of hours for which approval is requested;
5. The name, address, and telephone number of the program sponsor and presenter(s); and
6. The date and place of program.

81-006.04C An applicant may submit such additional documents or information as the applicant may consider relevant to the application and in compliance with the Act and these regulations.

81-006.04D In the event that an application is determined to be incomplete, the Division will notify the applicant of the information necessary to complete the application and retain the application submitted pending receipt of such additional information. The applicant has 10 days in which to provide the information necessary to complete the application. Should an applicant fail to complete the application within such 10 day period, all materials will be returned and a new application will be necessary.

81-006.05 Homestudy Program Process and Approval

81-006.05A Process: The board will evaluate applications from program sponsors, or licensees, of homestudy programs to determine if approval is to be granted or denied. To be approved, a homestudy program must meet the following criteria:

1. The homestudy program's objectives must relate directly to the theory or clinical application of theory pertaining to massage therapy;
 - a. Beginning November 1, 2005, the homestudy program's objectives must relate to equipment and sanitation, infectious and contagious disease control, anatomy, physiology, business, pathology, hygiene, and stress management;
2. The program sponsor must be qualified by education, experience, or training; and
3. The program sponsor must require the licensee to pass a final examination with a minimum score of 70%; and
4. The Program Sponsor must issue proof of licensee attendance. Such proof must

include:

- a. Name of the program;
- b. Name of the licensee who completed the program; and
- c. Name of the program sponsor.

81-006.05B Approval: To obtain approval of a home study program, a program sponsor or licensee must submit a completed application on Attachment E attached to these regulations and incorporated by this reference or an alternate form which contains the same information. Only applications which are complete will be considered. The following information must be included in the application:

1. The name of the textbook or other training material utilized;
2. A description of the qualifications of the program sponsor, which includes the education, experience and training that qualifies the individual to present and/or develop home study programs. Curriculum vita, resume, or documentation of training in development of home study programs may also be submitted as supporting documentation of the program sponsor's qualifications;
3. A description of the objectives, which includes:
 - a. Learner objectives per topic;
 - b. Hours offered for each learner objective;
 - c. Subject matter that corresponds to each objective; and
 - d. Teaching method per topic; and
4. The name, address, and telephone number of individual submitting the application.

81-006.05C An applicant may submit such additional documents or information as the applicant may consider relevant to the application and in compliance with the Act and these regulations.

81-006.05D In the event that an application is determined to be incomplete, the Division will notify the applicant of the information necessary to complete the application and retain the application submitted pending receipt of such additional information. The applicant has 10 days in which to provide the information necessary to complete the application. Should an applicant fail to complete the application within such 10 day period, all materials will be returned and a new application will be necessary.

81-006.06 Written Paper Process and Approval

81-006.06A Process: The Board will evaluate applications from licensees for papers written by a licensee to determine if approval is to be granted or denied. To be approved, a paper must meet the following criteria:

1. Cover one or more of the approved topic areas as defined in 172 NAC 81-006.03A;
2. Be typed in 12 point font and double spaced with 1 inch margins;
3. Have a cover page which includes the title of the paper;

4. Be 7 full pages (cover page is not included);
5. Include the names of 3 references (a limit of 1 internet site may be used);
and
6. Include the name and address of the licensee.

81-006.06B Approval: To obtain approval of a paper, a licensee must submit Attachment F attached to these regulations and incorporated by this reference and a copy of the completed written paper. Only applications which are complete will be considered. The purpose of the review is not to critique the paper, but to assure the paper meets the criteria in 172 NAC 81-006.06A.

81-006.07 Publications Process and Approval

81-006.07A Process: Board approval is not required for a publication to be considered acceptable. To be accepted, a publication must meet the following criteria:

1. The publication/article objectives must relate to topic areas defined in 172 NAC 81-006.03A; and
2. The publication/article must be already published or accepted for publication in a refereed and/or peer reviewed professional journal, or as a chapter of a book, or as a book.

81-006.08 Additional Information: The program sponsor or licensee may submit such additional documents or information as the applicant may consider relevant to the application and compliance with the provisions of these regulations.

81-006.09 Prior Approval: The program sponsor or licensee must submit a complete application to the Department at least 60 days prior to the date on which the program is to be given to gain approval before the program is presented.

81-006.10 Continuing Approval: Once a program sponsor is granted approval by the Board for a continuing education workshop or homestudy program, reapproval during the biennial renewal period will not be required for each subsequent occasion on which the program is administered so long as the program is not changed. If any portion of the program is changed or the program is offered during a subsequent biennial renewal period, reapplication must be made pursuant to 172 NAC 81-006.04 and 81-006.05.

81-006.11 Post-Program Approval: Applications for approval of a continuing education workshop or homestudy program may be submitted after the program has occurred except those applications for approval submitted 60 days or less before November 1 of each odd-numbered year will not be considered for approval for the renewal period.

81-006.12 Advertisement of Approvals: After the Board has granted its written approval of the application, the program sponsor must publish on all program advertisements the following statement: "The Nebraska Board is not making judgment nor does it endorse the effectiveness or potential risks of approved programs" and is entitled to state upon any publication which advertises or announces the program, the following statement: "This program is approved for ____ hours of continuing competency by the Nebraska Board of

Massage Therapy."

81-006.13 Denial of Continuing Education or Homestudy Programs

81-006.13A The Department will deny an application for approval of a continuing education workshop or homestudy program or will suspend or revoke approval of a continuing education or homestudy program on any of the following grounds:

1. Fraud or misrepresentation of information in an application;
2. Program content or the presenter's qualifications fail to meet requirements specified in 172 NAC 81-006.04 or 81-006.05; or
3. If the program's objectives do not relate to the topic areas specified in 172 NAC 81-006.02 or 81-006.03A.

81-006.13B The Board may grant or deny an application for approval of a continuing education or homestudy program. Should the Board determine to deny an application for approval of a continuing education or homestudy program, it will send to the applicant by either certified or registered mail to the last address of record in the Department a notice setting forth the reasons for the determination. The denial will become final 30 days after the mailing of the notice unless the applicant within such 30 day period gives written notice to the Department of a desire for hearing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1 of the Rules of Practice and Procedure for the Department.

81-007 PROCEDURES FOR RENEWAL OF LICENSE: All licenses issued by the Department under the Act and these regulations expire on November 1 of each odd-numbered year.

81-007.01 Any license holder who wishes to renew his/her license must:

1. Meet the continuing competency requirements as specified in 172 NAC 81-006;
2. Pay the renewal fee as specified in 172 NAC 81-012;
3. Respond to the following questions:
 - a. Has your license in any profession in another state been revoked, suspended, limited or disciplined in any manner?
 - b. Have you been convicted of a misdemeanor or felony?
4. Cause to be submitted to the Department:
 - a. The renewal notice;
 - b. The renewal fee;
 - c. Attestation of completing the required hours of continuing competency earned within 24 months of the date of expiration or application for waiver of continuing competency. Attestation to meeting continuing competency requirements satisfies the submission of the documentation requirement of Neb. Rev. Stat. §71-110;
 - d. If any disciplinary action was taken against the applicant's license by another state, an official copy of the disciplinary action, including charges and disposition;
 - e. If the licensee has been convicted of a misdemeanor or felony:
 - (1) Official Court Record, which includes charges and disposition;
 - (2) Copies of arrest records;

- (3) A letter from the licensee explaining the nature of the conviction;
- (4) All addiction/mental health evaluations and proof of treatment; and
- (5) A letter from the probation officer addressing probationary conditions and current status, if the licensee is currently on probation.

81-007.02 First Notice: At least 30 days before November 1 of each odd-numbered year, the Department will send a renewal notice by means of regular mail to each licensee's last place of residence as noted in the records of the Department. It is the responsibility of the licensee prior to the renewal period to notify the Department of any name and/or address changes.

81-007.02A The renewal notice must specify:

1. The name of the licensee;
2. The license holder's last known address of record;
3. The license number;
4. The expiration date of the license;
5. The renewal fee as prescribed in 172 NAC 81-012;
6. The number of continuing competency hours required for renewal; and
7. The option to place the license on either inactive or lapse status;

81-007.02B The licensee must apply for renewal by submitting to the Department:

1. The renewal notice;
2. The renewal fee;
3. The licensee's social security number;
4. Attestation of completing the required hours of continuing competency earned within 24 months of the date of expiration and a listing of the continuing competency activities completed or application for waiver of continuing competency; and
5. Documentation relating to misdemeanor or felony conviction(s) or licensure revocation, suspension, limitation or disciplinary action (if applicable).

81-007.02C If the licensee wishes to place his/her license on either inactive or lapsed status, s/he must:

1. Request that his/her license be placed on inactive status by submitting to the Department:
 - a. The renewal notice with a mark in the box marked inactive; and
 - b. The fee of \$25.00; or
2. Request that his/her license be placed on lapsed status by submitting to the Department:
 - a. The renewal notice with a mark in the box marked lapsed.

81-007.02D The Department must notify the licensee in writing of the acceptance or denial of the request to allow the license to be placed on lapse or inactive status.

81-007.03 Second Notice: The Department will send to each licensee who fails to renew his/her license or place the license on inactive or lapsed status in response to the first notice a second notice of renewal in accordance with the requirements of 172 NAC 81-007.01 that specifies:

1. That the licensee failed to pay the renewal fee;
2. That the license has expired;
3. That the licensee is subject to an administrative penalty under 172 NAC 81-013 if s/he practices after the expiration date;
4. That upon receipt of the renewal fee, together with an additional late fee of \$25.00 and documentation of continuing competency hours within that time, no order of revocation will be entered; and
5. That upon failure to receive \$25.00 in addition to the regular renewal fee and documentation of continuing competency hours the license will be revoked as specified in 172 NAC 81-008.

81-007.03A The licensee must apply for renewal by submitting to the Department:

1. The renewal notice;
2. The renewal fee and the additional late fee of \$25.00;
3. The licensee's social security number;
4. Attestation by the licensee:
 - (1) That s/he has not practiced in Nebraska since the expiration of his/her license; or
 - (2) To the actual number of days practiced in Nebraska since the expiration of his/her license;
5. Attestation of completing the required hours of continuing competency earned within 24 months of the date of expiration and a listing of the continuing competency activities completed or application for waiver of continuing competency (if applicable); and
6. Documentation relating to misdemeanor or felony conviction(s) or licensure revocation, suspension, limitation or disciplinary action (if applicable).

81-007.03B If the licensee wishes to place his/her license on either inactive or lapsed status, s/he must:

1. Request that his/her license be placed on inactive status by submitting to the Department:
 - a. The renewal notice with a mark in the box marked inactive; and
 - b. The fee of \$25.00; or
2. Request that his/her license be placed on lapsed status by submitting to the Department:
 - a. The renewal notice with a mark in the box marked lapsed.

81-007.03C The Department must notify the licensee in writing of the acceptance or denial of the request to allow the license to be placed on lapse or inactive status.

81-007.04 When any licensee fails, within 30 days of expiration of a license, to pay the renewal fee, to submit documentation of continuing competency, and/or to pay an additional late fee of \$25, the Department will automatically revoke the license without further notice or hearing and make proper record of the revocation.

81-007.05 Failure to meet the continuing competency requirement for renewal within 30 days

of expiration of his/her license will constitute non-renewal of a license, unless a waiver of continuing competency is granted or the license is placed on inactive or lapsed status. When any licensee fails, within 30 days of expiration of a license, to meet the continuing competency requirements for renewal and to pay an additional late fee of \$25, the Department revokes the license after notice and opportunity for hearing. Hearings held before the Department must be conducted in accordance with Neb. Rev. Stat. §§ 84-901 to 84-920, Administrative Procedure Act and 184 NAC 1, Rules of Practice and Procedure of the Department.

81-007.06 When the licensee has given notification to the Department that s/he desires to have the license lapse or be placed on inactive status upon expiration, 172 NAC 81-007.04 and 81-007.05 will not apply.

81-007.07 The Department may refuse to renew a license for falsification of any information submitted for renewal of a license. The refusal must be made pursuant to Neb. Rev. Stat. §§ 71-149 to 71-155 and 184 NAC 1, Rules of Practice and Procedure of the Department.

81-007.08 An individual who practices after expiration of his/her credential is subject to assessment of an Administrative Penalty pursuant to 172 NAC 81-013, or such other action as provided in the statutes and regulations governing the credential.

81-007.09 Waiver of Continuing Competency: The Department, on the recommendation of the Board, may waive the continuing competency requirements, in part or in total, for any two-year licensing period when a license holder submits documentation that circumstances beyond his/her control prevented completion of such requirements.

81-007.09A Such circumstances include situations in which:

1. The licensee holds a Nebraska license but is not practicing his/her profession in Nebraska;
2. The licensee has served in the regular armed forces of the United States during part of the 24 months immediately preceding the license renewal date;
3. The licensee has submitted proof that s/he was suffering from a serious or disabling illness or physical disability which prevented completion of the required number of continuing competency hours during the 24 months immediately preceding the license renewal date; and
4. The licensee was first licensed within the 24 months immediately proceeding the license renewal date.

81-007.09B Application for Waiver of Continuing Competency: Any license holder who seeks a waiver of continuing competency in part or in total for any two-year licensing period must apply to the Department. The Department, on the recommendation of the Board, may waive continuing competency requirements in part or in total for any two-year licensing period. The license holder must submit:

1. A complete application for waiver of continuing competency on the renewal form. Only applications which are complete will be considered, and the application must be received by the Credentialing Division on or before November 1 of the year the license is subject to renewal; and

2. Documentation of the circumstances beyond the license holder's control which prevented completion of continuing competency requirements as set forth in 172 NAC 81-006, including:
 - a. A license holder who holds a Nebraska license but is not practicing in Nebraska must mark the appropriate response on the renewal form;
 - b. A license holder who has served in the regular armed forces of the United States during part of the 24 months immediately preceding the license renewal date must mark the appropriate response on the renewal form and submit official documentation stating the dates of such service;
 - c. A license holder who was suffering from a serious or disabling illness or physical disability which prevented completion of the required number of hours of continuing competency during the 24 months immediately preceding the license renewal date must mark the appropriate response on the renewal form and submit a statement from a treating physician(s) stating that the license holder was injured or ill, the duration of the illness or injury and of the recovery period, and that the license holder was unable to attend continuing competency programs during that period; or
 - d. A license holder who was first licensed within the 24 months immediately preceding the license renewal date must mark the appropriate response on the renewal form and list the date said license was issued.

81-007.09C The Department, upon the recommendation of the Board, may grant or deny, in part or in total, an application for waiver of continuing competency requirements upon proof that circumstances beyond the applicant's control prevented completion of such requirements.

1. When the Department determines to deny an application for waiver of continuing competency requirements, it will send to the applicant by certified mail to the last name and address of record in the Department a notice setting forth the reason for the denial determination.
 - a. The applicant has 30 days from the date of the denial notice to make a written request to the Department for an appeal. The appeal will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1 Rules of Practice and Procedure for the Department.
 - b. The Department will issue at the conclusion of the appeal pursuant to 184 NAC 1, a final order setting forth the results of the appeal.
2. When the Department determines to grant a waiver of continuing competency, the applicant will be notified within 30 days of receipt of the application.

81-007.10 Audit of Continuing Competency: The Board may select, in a random manner, a sample of the license renewal applications for audit of continuing competency credits. Each licensee must maintain in his/her personal files such certificates or records of credit from continuing competency programs received from approved program sponsors. Each

licensee selected for audit must produce documentation of attendance at those continuing competency activities listed on his/her renewal application.

1. The Department will send to each licensee selected for audit a notice of audit.
2. When selected for audit, the licensee must provide satisfactory documentation of attendance at or participation in approved continuing competency programs listed on the license holder's renewal application. Satisfactory documentation includes, but is not limited to, certifications of attendance, certified attendance rosters, or letters from sponsors of continuing competency verifying attendance.
 - a. In the absence of prior approval of continuing competency activities attended, the licensee may submit material to the Board for approval as specified in 172 NAC 81-006.
3. Failure to comply with the audit will be grounds for non-renewal of the license.

81-008 CREDENTIAL REVOCATION FOR FAILURE TO MEET RENEWAL REQUIREMENTS:
The Department may revoke a credential when the credential holder fails to meet the renewal requirements

81-008.01 Revocation for Nonpayment of Renewal Fee or Late fee, or Failure to Submit Documentation of Continuing Competency within Thirty Days of Expiration of the Credential

-

81-008.01A When a credential holder fails to pay the required renewal fee, to submit documentation of continuing competency, and/or to pay a late fee of \$25 and fails to request that his/her credential be placed on either inactive or lapsed status within 30 days of its expiration, the Department automatically revokes the credential without further notice or hearing.

81-008.01A1 A post revocation notice will be sent which will specify that:

1. The credential holder was given a first and final notice of renewal requirements and the respective dates for these notices;
2. The credential holder failed to renew the credential or to request that his/her credential be placed on inactive or lapsed status;
3. The Department has revoked the credential; and
4. The credential holder has a right to request reinstatement of the credential.

81-008.02 Revocation for Failure to Meet Continuing Competency Requirements

81-008.02A When a credential holder fails within 30 days of the expiration of his/her credential to meet the continuing competency requirement, the Department revokes his/her credential after notice and opportunity for a hearing.

81-008.02A1 The revocation notice for failure to meet continuing competency requirements specifies that:

1. The credential holder was given a first and second notice of failure

- to meet the continuing competency requirement and the respective dates of each notice;
2. The credential holder failed to meet continuing competency renewal requirements or to have his/her credential timely placed on inactive or lapsed status;
3. The credential has been revoked for failure to meet continuing competency requirements within thirty days after expiration of the credential and that the revocation will become final unless a request for hearing is filed by the credential holder with the Department within 30 days of date of receipt of the notice; and
4. The credential holder has a right to request reinstatement of the credential after revocation.-

81-009 GROUNDS ON WHICH THE DEPARTMENT MAY DENY, REFUSE RENEWAL OF, OR DISCIPLINE A LICENSE

81-009.01 The Department will deny an application for a license when the applicant fails to meet the requirements for licensure as specified in 172 NAC 81-003 or is found to be in violation of any of the provisions of 172 NAC 81-009.03.

81-009.02 The Department will refuse renewal of a license if the licensee fails to meet the requirements specified in 172 NAC 81-007 or in 172 NAC 81-009.03.

81-009.03 The Department may deny, refuse renewal of, limit, suspend, or revoke licenses for any of the following grounds and those specified in Neb. Rev. Stat. §71-147:

1. Fraud, forgery, or misrepresentation of material facts, in procuring or attempting to procure a license.
2. Grossly immoral or dishonorable conduct evidencing unfitness or lack of proficiency sufficient to meet the standards required for practice of the profession in this state.
3. Habitual intoxication or dependence or failure to comply with a treatment program or an aftercare program entered into under the Licensee Assistance Program established pursuant to Neb. Rev. Stat. §71-172.01.
4. Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction and which, if committed within this state, would have constituted a misdemeanor or felony under state law and which has a rational connection with the applicant's or license holder's fitness or capacity to practice the profession.
5. Practice of the profession
 - a. fraudulently,
 - b. beyond its authorized scope,
 - c. with manifest incapacity,
 - d. with gross incompetence or gross negligence, or
 - e. in a pattern of negligent conduct. A pattern of negligent conduct means a continued course of negligent conduct in performing the

duties of the profession.

6. Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, narcotic drugs, physical disability, mental disability, or emotional disability.
7. Physical or mental incapacity to practice the profession as evidenced by a legal adjudication or a determination thereof by other lawful means.
8. Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a license or certificate by a person not licensed or certified to do so.
9. Having had his/her license denied, refused renewal, limited, suspended, or revoked or having had such license disciplined in any other manner in accordance with Neb. Rev. Stat. §71-155 by another state or jurisdiction to practice massage therapy based upon acts by the applicant or licensee similar to acts described in Neb. Rev. Stat. §71-155 or 172 NAC 81-009. A certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, or registration or the taking of other disciplinary measures against it by another state or jurisdiction is conclusive evidence.
10. Unprofessional conduct, which term includes all acts specified in Neb. Rev. Stat. §71-148 and such other acts as specified in 172 NAC 81-011.
11. Use of untruthful or improbable statements, or flamboyant, exaggerated, or extravagant claims concerning such license holder's professional excellence or abilities in advertisements.
12. Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act.
13. Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes.
14. Willful or repeated violations of the Uniform Licensing Law or of 172 NAC 81, 82, or 83 relating to the license holder's profession, sanitation, quarantine, or school inspection.
15. Unlawful invasion of the field of practice of any profession mentioned in the Uniform Licensing Law which the license holder is not licensed or certified to practice.
16. Practicing the profession of Massage Therapy while his/her license is suspended or in contravention of any limitation placed upon his/her license.
17. When the applicant is found to be not qualified to practice the particular profession or occupation for which s/he is applying, licensed, or certified because of physical or mental illness or physical or mental deterioration or disability.
18. Refusal of an applicant for a license to submit to a physical or mental

examination requested by the Board, pursuant to Neb. Rev. Stat. §§71-161.12 to 71-161.16 to determine his/her qualifications to practice or to continue in the practice of the profession or occupation for which application was made or for which s/he is licensed.

19. Failure to file a report required by Neb. Rev. Stat. §71-168.

81-009.04 If the Department proposes to deny, refuse renewal of, limit, revoke, or suspend a license other than for non-payment of the renewal fee, the applicant or license holder will be given an opportunity for a hearing before the Department and will have the right to present evidence on his/her own behalf. Hearings before the Department will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Rules of Practice and Procedure for the Department.

81-010 RE-CREDENTIALING: This section applies to individuals previously issued a Nebraska credential who have lost the legal authority to practice in total or in part and who seek the authority to return to practice in Nebraska with a valid Nebraska credential.

81-010.01 Eligibility

81-010.01A An individual whose credential has been previously:

1. Placed on lapsed status;
2. Placed on inactive status;
3. Revoked for failure to meet the renewal requirements;
4. Suspended or limited for disciplinary reasons; or
5. Voluntarily surrendered or voluntarily limited for an indefinite period of time;

may request, at any time, to be re-credentialed and re-authorized to practice under the credential, in accord with these regulations.

81-010.01B An individual whose credential has been revoked for disciplinary reasons may apply for reinstatement only after a period of two years has elapsed from the date of revocation.

81-010.01C An individual who practices prior to re-credentialing is subject to:

1. Assessment of an Administrative Penalty pursuant to 172 NAC 81-013, and
2. Limitation or other sanction on the credential, or denial of the request to be re-credentialed and re-authorized to practice under the credential, and referral for prosecution for uncredentialed practice, as provided in the statutes and regulations governing the credential.

81-010.02 Requirements for Restoration from Lapsed Status: A person whose credential has been placed on lapsed status may have his/her credential restored from lapsed to active status by the Department upon proof to the Department that s/he meets the requirements pursuant to 172 NAC 81-003.

81-010.02A If the Department has evidence that an applicant has practiced while his/her credential was lapsed, the Department may:

1. Assess an Administrative Penalty pursuant to 172 NAC 81-013;
2. Initiate disciplinary action against the lapsed credential;
3. Deny the request to restore the credential from lapsed to active status; or
4. Restore the credential to active status and impose limitation(s) or other sanctions on the credential.

81-010.02B If the Department has evidence that an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:

1. Initiate disciplinary action against the lapsed credential;
2. Deny the request to restore the credential from lapsed to active status; or
3. Restore the credential to active status and impose limitation(s) or other sanctions on the credential.

81-010.02C The Department will act within 150 days on all completed applications.

81-010.02D The applicant will be provided with notice and the opportunity for hearing in accord with the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920 before any of the actions pursuant to 172 NAC 81-010.02A or 81-010.02B are final.

81-010.03 Requirements to Move a Credential from Inactive to Active Status: A person whose credential has been placed on inactive status may have his/her credential moved from inactive to active status upon proof to the Department that s/he meets the following requirements:

1. Meet renewal requirements, including:
 - a. The continuing competency requirements; and
 - b. Paying the renewal fee and any other applicable fees;
2. Attest:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

81-010.04 Procedures for Moving from Inactive to Active Status: To move a credential from inactive status to active status, the applicant must submit the following to the Department:

1. A written application which contains the following information about the applicant:
 - a. Name;
 - b. Address;
 - c. Social security number; and

- d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
- e. A statement describing all:
 - (1) Felony or misdemeanor convictions during the time period since the credential was active;
 - (a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:
 - [1] Official Court Record, which includes charges and disposition;
 - [2] Arrest records;
 - [3] A letter from the applicant explaining the nature of the conviction;
 - [4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and
 - [5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.
 - (2) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was active;
 - (a) If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and
 - (3) Disciplinary charges pending against any professional credential held by the applicant.
- f. Verification that the continuing competency requirements for renewal have been met;
- 2. The renewal fee and any other applicable fees; and
- 3. Attestation by applicant:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

81-010.04A If an applicant has practiced while his/her credential was inactive, the Department may:

- 1. Assess an Administrative Penalty pursuant to 172 NAC 81-013;
- 2. Initiate disciplinary action against the credential;
- 3. Deny the request to move the credential from inactive to active status; or

4. Move the credential to active status and impose limitation(s) or other sanctions on the credential.

81-010.04B If an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:

1. Initiate disciplinary action against the credential;
2. Deny the request to move the credential from inactive to active status; or
3. Move the credential to active status and impose limitation(s) or other sanctions on the credential.

81-010.04C In either event pursuant to 172 NAC 81-010.04A or 81-010.04B, a notice and the opportunity for hearing will be given to the applicant.

81-010.04D The Department will act within 150 days on all completed applications.

81-010.05 Requirements for Reinstatement Within One Year Following Revocation for Failure to Meet the Renewal Requirements: An applicant for reinstatement who applies not more than one year following revocation for failure to meet renewal requirements must:

1. Meet the renewal requirements, including:
 - a. The continuing competency requirements; and
 - b. Paying the renewal fee, the late fee of \$35, and any other applicable fees; and
2. Attest:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.

81-010.06 Procedures for Reinstatement Within One Year Following Revocation for Failure to Meet the Renewal Requirements: To reinstate a credential not more than one year following revocation for failure to meet renewal requirements, the applicant must submit the following to the Department:

1. A written application which contains the following information about the applicant:
 - a. Name;
 - b. Address;
 - c. Social security number; and
 - d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
 - e. A statement describing all:
 - (1) Felony or misdemeanor convictions during the time period since the credential was active;
 - (a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:
 - [1] Official Court Record, which includes charges

- and disposition;
 - [2] Arrest records;
 - [3] A letter from the applicant explaining the nature of the conviction;
 - [4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and
 - [5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.
- (2) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was revoked;
 - (a) If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and
- (3) Disciplinary charges pending against any professional credential held by the applicant.
- f. Verification that the continuing competency requirements for renewal have been met;
- 2. The renewal fee, the late fee of \$35 and any other applicable fees; and
- 3. Attestation by the applicant:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.
 - (1) If an applicant has practiced after his/her credential was revoked the Department may assess an Administrative Penalty pursuant to 172 NAC 81-013 in which case a notice and opportunity for hearing will be sent to the applicant.
 - (2) If an applicant has practiced after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken pursuant to 172 NAC 81-010.06B.

The Department will forward the application to the Board for its recommendation pursuant to Neb. Rev. Stat. § 71-110 (5).

81-010.06A The Board's recommendation to the Department may be to:

1. Reinstate the credential;
2. Reinstate the credential with terms, conditions or restrictions; or
3. Deny reinstatement.

81-010.06B Upon receipt of the Board's recommendation, the Department will, within 150 days, send to the applicant a written notice of the Department's response. The Department may:

1. Reinstate the credential. An Administrative Penalty may be assessed pursuant to 172 NAC 81-013 if warranted;
2. If the Department determines that the applicant has committed acts or offenses prohibited by Neb. Rev. Stat. §§ 71-147 or 71-148, the Department may:
 - a. Reinstate the credential with terms, conditions or restrictions. In such case the applicant will be provided notice and the opportunity for hearing before the Department pursuant to the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920. An Administrative Penalty may be assessed pursuant to 172 NAC 81-013 if warranted; or
 - b. Deny reinstatement. In such case the applicant will be provided notice and the opportunity for hearing before the Department pursuant to the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920.

81-010.07 Requirements for Reinstatement More Than One Year Following Revocation for Failure to Meet the Renewal Requirements: An applicant for reinstatement who applies more than one year after revocation for failure to meet the renewal requirements must:

1. Petition the Board for reinstatement pursuant to Neb. Rev. Stat. § 71-161.05. The petition for reinstatement must be accompanied by:
 - a. Verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was revoked; and
 - b. Verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was revoked.
2. Meet the renewal requirements, including:
 - a. The continuing competency requirements; and
 - b. Paying the renewal fee, the late fee of \$75 and any other applicable fees.
3. Attest:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.

81-010.08 Procedures for Reinstatement More Than One Year Following Revocation for Failure to Meet Renewal Requirements: An applicant for reinstatement more than one year following revocation for failure to meet renewal requirements must submit to the Board:

1. A petition for reinstatement:
 - a. Stating the reason the petitioner believes his/her credential should be reinstated;

- b. Accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was revoked; and verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was revoked.
- c. Containing the following information about the petitioner:
 - (1) Name;
 - (2) Address;
 - (3) Social security number; and
 - (4) If the petitioner holds a professional credential in another state, a list of the state(s) and type of credential;
 - (5) A statement describing all:
 - (a) Felony or misdemeanor convictions during the time period since the credential was active;
 - [1] If the petitioner has been convicted of a felony or misdemeanor, provide copies of:
 - [a] Official Court Record, which includes charges and disposition;
 - [b] Arrest records;
 - [c] A letter from the petitioner explaining the nature of the conviction;
 - [d] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and
 - [e] A letter from the probation officer addressing probationary conditions and current status, if the petitioner is currently on probation.
 - (b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the petitioner during the time period since the credential was revoked;
 - [1] If any disciplinary action was taken against the petitioner's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and
 - (c) Disciplinary charges pending against any professional credential held by the petitioner.
 - (6) Verification that the continuing competency requirements for renewal have been met.
- 2. The renewal fee, the late fee of \$75 and any other applicable fees; and
- 3. Attestation by the petitioner:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.
 - (1) If a petitioner has practiced after his/her credential was revoked the Department may assess an Administrative Penalty pursuant to 172

NAC 81-013 in which case a notice and opportunity for hearing will be sent to the petitioner.

- (2) If a petitioner has practiced after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken pursuant to 172 NAC 81-010.08F.

81-010.08A The petition to recommend reinstatement will be considered at the next meeting of the Board that is held, but not earlier than 30 days after the petition is filed.

81-010.08B Any petition to recommend reinstatement of a credential will be conclusively acted upon by the Board within 180 days after the filing of a properly prepared petition and the necessary accompanying documents with the Board.

81-010.08C If the Board recommends reinstatement of the credential, no public hearing need be held on the petition.

81-010.08D Prior to any recommendation by the Board against reinstatement of the credential, an opportunity for a formal public hearing on the petition must be granted by the Board if formally requested by the petitioner.

81-010.08D1 The petitioner's request for a formal hearing must be submitted within 30 days of the Board's notification of an opportunity for a formal public hearing.

81-010.08E If the petitioner formally requests a formal public hearing or if the Board otherwise holds such a hearing, the petitioner will be given at least 30 days prior notice by sending to the petitioner a copy of the notice of hearing by certified or registered mail at his/her last known residence or business post office address as shown by the files or records of the Department or as otherwise known. Notice may be given to the petitioner by personal service. The hearing will be conducted pursuant to 172 NAC 1.

81-010.08F The Board will review the petition to recommend reinstatement and the record of any hearing held, and submits its recommendation regarding reinstatement and the record on which such recommendation is made to the Department within 180 days of receipt of the petition to recommend reinstatement.

81-010.08F1 If the Board recommends reinstatement of the credential, the Department may:

1. Accept the Board's recommendation and grant reinstatement of the credential.
2. If the Department determines that the Board's recommendation is: in excess of statutory authority; made upon unlawful procedure; unsupported by competent, material, and substantial evidence; or arbitrary or capricious, the Department may not accept the Board's recommendation and either:
 - a. Deny reinstatement of the credential, or

- b. Grant reinstatement with terms, conditions, or restrictions.

81-010.08F2 If the Board recommends denial of reinstatement, the Board will send to the petitioner a written notice of the Board's recommendation. The petitioner may appeal the Board's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

81-010.08F3 If the Board recommends reinstatement with terms, conditions, or restrictions, the Department may:

1. Accept the Board's recommendation and grant reinstatement with terms, conditions, or restrictions; or
2. Not accept the Board's recommendation and either:
 - a. Deny reinstatement of the credential; or
 - b. Grant reinstatement of the credential.

81-010.08F4 The Department will within 150 days of receipt of the Board's recommendation send to the petitioner a written notice of the Department's reinstatement with or without terms, conditions, or restrictions or denial of reinstatement of the credential.

81-010.08F5 The petitioner may appeal the Department's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

81-010.09 Requirements to Reinstate a Credential Following Suspension, Limitation, or Revocation for Disciplinary Reasons: An applicant for reinstatement following suspension, limitation, or revocation for disciplinary reasons must meet the following requirements:

1. Petition the Board for reinstatement:
 - a. The petition for reinstatement must be accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked; and
 - b. Verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked.
2. Pay the reinstatement fee of \$75, and other profession-specific requirements if expressly set by law;
3. If the credential was revoked or suspended, attest:
 - a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
 - b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.

81-010.10 Procedures for Reinstatement Following Suspension, Limitation, or Revocation

for Disciplinary Reasons: An applicant for reinstatement following suspension, limitation, or revocation for disciplinary reasons must submit to the Board:

1. A petition for reinstatement:
 - a. Stating the reason the petitioner believes his/her credential should be reinstated;
 - b. Accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked; and verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked.
 - c. Containing the following information about the petitioner:
 - (1) Name;
 - (2) Address;
 - (3) Social security number; and
 - (4) If the petitioner holds a professional credential in another state, a list of the state(s) and type of credential;
 - (5) A statement describing all:
 - (a) Felony or misdemeanor convictions during the time period since the credential was suspended, limited, or revoked;
 - [1] If the petitioner has been convicted of a felony or misdemeanor, provide copies of:
 - [a] Official Court Record, which includes charges and disposition;
 - [b] Arrest records;
 - [c] A letter from the petitioner explaining the nature of the conviction;
 - [d] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and
 - [e] A letter from the probation officer addressing probationary conditions and current status, if the petitioner is currently on probation.
 - (b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the petitioner during the time period since the credential was suspended, limited, or revoked;
 - [1] If any disciplinary action was taken against the petitioner's credential by another state, submit an official copy of the

- disciplinary action, including charges and disposition; and
- (c) Disciplinary charges pending against any professional credential held by the petitioner;
- (6) Any continuing competency activities; and
2. The reinstatement fee of \$75.
3. Attestation by the petitioner, if the credential was revoked or suspended:
- a. That s/he has not practiced in Nebraska since s/he last held an active credential; or
- b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.
- (1) If a petitioner has practiced after his/her credential was revoked the Department may assess an Administrative Penalty pursuant to 172 NAC 81-013 in which case a separate notice and opportunity for hearing will be sent to the petitioner.
- (2) If a petitioner has practiced after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken pursuant to 172 NAC 81-010.10G.

81-010.10A The Board will make a recommendation to the Director regarding reinstatement following disciplinary action. In determining whether reinstatement should be recommended, the Board may:

1. Request the Department investigate all activities of the petitioner since the disciplinary action was taken against him/her, including activities prohibited by Neb. Rev. Stat. §§71-147 and 71-148.
2. Require the petitioner to submit to a complete diagnostic examination by one or more physicians appointed by the Board, the petitioner being free also to consult a physician or physicians of his/her own choice for a complete diagnostic examination and make available a report or reports thereof to the Board;
3. Require the petitioner to pass a written, oral, or practical examination or any combination of such examinations; or
4. Require the petitioner to complete additional education.

81-010.10B The petition to recommend reinstatement will be considered at the next meeting of the Board that is held, but not earlier than 30 days after the petition is filed.

81-010.10C Any petition to recommend reinstatement of a credential will be conclusively acted upon by the Board within 180 days after the filing of a properly prepared petition and the necessary accompanying documents with the Board.

81-010.10D If the Board recommends reinstatement of the credential, no public hearing need be held on the petition.

81-010.10E Prior to any recommendation by the Board against reinstatement of the

credential, an opportunity for a formal public hearing on the petition must be granted by the Board, if formally requested by the petitioner.

81-010.10E1 The petitioner's request for a formal hearing must be submitted within 30 days of the Board's notification of an opportunity for a formal public hearing.

81-010.10E2 If the petitioner had a hearing or an opportunity for a hearing on a prior petition to recommend reinstatement filed pursuant to Neb. Rev. Stat. § 71-161.04 within a period of two years immediately preceding the filing of such petition, the Board may grant or deny, without a hearing, any petition to recommend reinstatement filed pursuant to Neb. Rev. Stat. § 71-161.04.

81-010.10F If the petitioner formally requests a formal public hearing or if the Board otherwise holds such a hearing, the petitioner will be given at least 30 days prior notice by sending to the petitioner a copy of the notice of hearing by certified or registered mail at his/her last known residence or business post office address as shown by the files or records of the Department or as otherwise known. Notice may be given to the petitioner by personal service. The hearing will be conducted pursuant to 172 NAC 1.

81-010.10G The Board reviews the petition to recommend reinstatement, any examination or investigatory information and the record of hearing, if one was held. The Board will submit its recommendation to the Director within 180 days of receipt of the petition to recommend reinstatement.

81-010.10G1 If the Board recommends reinstatement of the credential:

1. The Board will send its recommendation to the petitioner by certified mail along with notification that the petitioner must file an application for reinstatement with the Director.
2. The petitioner must submit, to the Department, an application for reinstatement by the Director within 30 days of receipt of the Board's recommendation.
 - a. The application must include:
 - (1) Name of the petitioner; and
 - (2) Signed statement that the petitioner requests the Director to issue the credential in accordance with the Board's recommendation for reinstatement.
3. Upon receipt of the application for reinstatement from the petitioner, the Department will submit the following to the Director:
 - a. The application;
 - b. The written recommendation of the Board, including any finding of fact or order of the Board;
 - c. The petition submitted to the Board;
 - d. The record of hearing, if any;
 - e. Any pleadings, motions, requests, preliminary or intermediate

rulings and orders, and similar correspondence to or from the Board and the petitioner.

4. The Director will issue a decision regarding reinstatement within 150 days of receipt of the petitioner's application for reinstatement. The Director's decision will be based upon a review of the record of the proceedings before the Board. The Director will not hold a second hearing. The Director may affirm, reverse, or modify the Board's recommendation. A decision by the Director to reverse or modify the Board's recommendation will be based on finding that the Board's recommendation is: in excess of statutory authority, made upon unlawful procedure, unsupported by competent, material, and substantial evidence in view of the entire record, or arbitrary or capricious.
 - a. When the Director affirms, modifies, or reverses the Board's recommendation for reinstatement, the Director will enter an Order setting forth the decision regarding reinstatement of the petitioner's credential. The order will be sent by certified mail to the petitioner;
 - b. If the petitioner does not accept the Director's decision, s/he may appeal such decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

81-010.10G2 If the Board recommends reinstatement of the credential with terms, conditions, or restrictions:

1. The Board will send its recommendation to the petitioner by certified mail along with notification that the petitioner must file an application for reinstatement with the Director.
2. The petitioner must submit, to the Department, an application for reinstatement by the Director within 30 days of receipt of the Board's recommendation.
 - a. The application must include:
 - (1) Name of the petitioner; and
 - (2) Signed statement that the petitioner requests the Director to issue the credential in accordance with the Board's recommendation for reinstatement.
3. Upon receipt of the application for reinstatement from the petitioner, the Department will submit the following to the Director:
 - a. The application;
 - b. The written recommendation of the Board, including any finding of fact or order of the Board;
 - c. The petition submitted to the Board;
 - d. The record of hearing, if any; and
 - e. Any pleadings, motions, requests, preliminary or intermediate

rulings and orders, and similar correspondence to or from the Board and the petitioner.

4. The Director will issue a decision regarding reinstatement within 150 days of receipt of the petitioner's application for reinstatement. The Director's decision will be based upon a review of the record of the proceedings before the Board. The Director will not hold a second hearing. The Director may affirm, reverse, or modify the Board's recommendation. A decision by the Director to reverse or modify the Board's recommendation will be based on finding that the Board's recommendation is: in excess of statutory authority, made upon unlawful procedure, unsupported by competent, material, and substantial evidence in view of the entire record, or arbitrary or capricious.
 - a. When the Director affirms, modifies or reverses the Board's recommendation for reinstatement, the Director will enter an Order setting forth the decision regarding reinstatement of the petitioner's credential. The order will be sent by certified mail to the petitioner;
 - b. If the petitioner does not accept the Director's decision, s/he may appeal such decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

81-010.10G3 If the Board denies reinstatement, the Board will send to the petitioner a written notice of the Board's recommendation to deny reinstatement. The petitioner may appeal the Board's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.

81-010.11 Procedures for Restoration of Credentials Voluntarily Surrendered or Limited for an Indefinite Period of Time

81-010.11A Credentials voluntarily surrendered or limited for an indefinite period of time pursuant to Neb. Rev. Stat. §71-161.11 may be restored at the discretion of the Department.

81-010.11A1 An applicant for restoration of a credential that was voluntarily surrendered or limited for an indefinite period of time must submit to the Department:

1. A written application which contains the following information about the applicant:
 - a. Name;
 - b. Address;
 - c. Social security number; and
 - d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
 - e. A statement describing all:
 - (1) Felony or misdemeanor convictions during the time period since the credential was active;
 - (a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:

- [1] Official Court Record, which includes charges and disposition;
 - [2] Arrest records;
 - [3] A letter from the applicant explaining the nature of the conviction;
 - [4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and
 - [5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.
- (2) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was active;
 - (a) If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and
 - (3) Disciplinary charges pending against any professional credential held by the applicant.
- f. Any continuing competency activities.
 - g. Attest:
 - (1) That s/he has not practiced in Nebraska prior to the voluntary surrender of his/her credential; or
 - (2) To the actual number of days practiced if the applicant has practiced in Nebraska prior to the voluntary surrender of his/her credential.

81-010.11A2 If an applicant has practiced while his/her credential was voluntarily surrendered, the Department may:

- 1. Assess an Administrative Penalty pursuant to 172 NAC 81-013;
- 2. Initiate disciplinary action against the credential;
- 3. Deny the request to restore the credential; or
- 4. Restore the credential to active status and impose limitation(s) or other sanctions on the credential.

81-010.11A3 If an applicant has committed any other violation of the statutes and regulations governing the credential while his/her credential was voluntarily surrendered or limited, the Department may:

- 1. Initiate disciplinary action against the credential;
- 2. Deny the request for restoration of the credential; or

3. Restore the credential to active status and impose limitation(s) or other sanctions on the credential.

81-010.11A4 In either event pursuant to 172 NAC 81-010.11A2 or 81-010.11A3, a notice and the opportunity for hearing will be given to the applicant.

81-010.11A5 The Department will act within 150 days on all completed applications.

81-010.12 Procedures for Restoration of Credentials Voluntarily Surrendered or Limited for a Specific and Definite Period of Time

81-010.12A Credentials voluntarily surrendered or limited for a specific and definite period of time as agreed to between the holder and Department pursuant to Neb. Rev. Stat. § 71-161.11 will be automatically restored at the expiration of that period of time.

81-010.12B If an individual has practiced while his/her credential was voluntarily surrendered for a specific and definite period of time, the Department may assess an

Administrative Penalty pursuant to 172 NAC 81-013.

81-010.13 Credentials Voluntarily Surrendered or Limited Permanently: Credentials that are voluntarily surrendered or limited permanently pursuant to Neb. Rev. Stat. § 71-161.11 will not be restored.

81-011 UNPROFESSIONAL CONDUCT: Pursuant to Neb. Rev. Stat. § 71-148 of the Uniform Licensing Law, actions of a licensee who fails to conform to the accepted standards of the profession and whose actions could jeopardize the health, safety and welfare of the clients constitute unprofessional conduct which includes but is not limited to the following:

81-011.01 Competence: A massage therapist must not provide services for which s/he is not trained or experienced. Unprofessional conduct in the practice of Massage Therapy includes but is not limited to:

1. Willfully or intentionally committing any act which endangers client safety or welfare;
and
2. Encouraging or promoting massage therapy by untrained or unqualified persons.

81-011.02 Public Statements: A massage therapist must be accurate and objective when advertising regarding professional services or products. Unprofessional conduct includes but is not limited to:

1. Advertising of massage therapy services which contains:
 - a. A false, fraudulent, misleading, deceptive statement;
 - b. A testimonial which attests to the performance of massage therapy in a superior manner or professional superiority; or
 - c. A statement concerning the comparative desirability of offered services;
2. Giving anything of value to a representative of the press, radio, television, or other

communication medium in anticipation of or in return for professional publicity in a news item;

3. Advertising for massage products offered for commercial sale without making reasonable efforts to ensure presentation of nondeceptive, accurate, or nonmisleading statements;
4. Knowingly permitting others to misrepresent the massage therapist's professional qualifications or the massage therapist's affiliation with products for personal gain of the massage therapist; and
5. Making deceptive or misleading representations of the massage therapist's education, training, or experience.

81-011.03. Confidentiality: A massage therapist must hold in confidence information obtained from a client, except in those unusual circumstances in which to do so would result in clear danger to the person or to others, or where otherwise required by law. Failure to do so constitutes unprofessional conduct.

81-011.04 Professional Relationships: A massage therapist must safeguard the welfare of clients and maintain appropriate professional relationships with clients and temporary licensees. Unprofessional conduct includes but is not limited to:

1. Using skills of the massage therapist to exploit clients;
2. Intentional failure to report to the Board of Massage Therapy known unprofessional conduct by a massage therapist;
3. Failure to decline to carry out massage therapy services that have been requested when such services are believed to be contraindicated or unjustified;
4. Failure to exercise appropriate supervision over a temporary licensee who is authorized to practice only under the supervision of the licensed massage therapist;
5. Willful betrayal of a professional secret except as otherwise provided by law;
6. Verbally or physically abusing clients or engaging in cruel, inhumane, or degrading practice in providing massage therapy to a client; or
7. Willful or intentional failure to accurately represent his/her skills to a client.

81-011.05 Sexual Misconduct: A massage therapist must under no circumstances engage in sexual acts with clients. Such unprofessional conduct includes, but is not limited to:

1. Providing sexual stimulation as part of massage therapy;
2. Soliciting a sexual relationship with a client;
3. Committing an act with a client punishable as a sexual or sexual related offense; or
4. Engaging in sexual harassment of a client. Sexual harassment means deliberate or

repeated comments, gestures, or physical contacts of a sexual nature that are unnecessary in the professional relationship with the client.

81-011.06 Fees for Services: A massage therapist must solicit or obtain fees for professional service in an appropriate manner and in a manner consistent with the laws of the State of Nebraska. Unprofessional conduct includes but is not limited to:

1. Solicitation of professional patronage by agents or persons, popularly known as cappers or steerers, or profiting by the acts of those representing themselves to be agents of the massage therapist;
2. Receipt of fees on the assurance that a manifestly incurable disease can be permanently cured;
3. Division of fees, or agreeing to split or divide the fees received for professional services with any person for bringing or referring a client; and
4. Obtaining any fee for professional services by fraud, deceit, or misrepresentation.

81-012 SCHEDULE OF FEES: The following fees have been set by the Department:

81-012.01 Initial License Fee: By an applicant for a license to practice massage therapy, the fee of \$25 and the Licensee Assistance Program fee of \$1 for each year remaining during the current biennial renewal period.

81-012.02 Pro-rated Initial License Fee: For issuance of a license that will expire within 180 days after its initial issuance date, a fee of \$25, and the Licensee Assistance Program fee of \$2.

81-012.03 Temporary License Fee: By an applicant for a temporary license, or extension of a temporary license, to practice as a massage therapist, the fee of \$15.

81-012.04 License Renewal Fee: By an applicant for renewal on a biennial basis of a license to practice massage therapy, the fee of \$25, and the Licensee Assistance Program fee of \$2.

81-012.05 Inactive License Status Fee: By an applicant to have his/her license placed on inactive status, the fee of \$25.

81-012.06 Renewal Late Fee: By an applicant for renewal on a biennial basis of a license, who fails to pay the renewal fee on or before the expiration date of his/her license, the fee of \$25 as a late fee in addition to the renewal fee.

81-012.07 Certification of License Fee: For issuance of a certification of a license, the fee of \$25. The certification includes information regarding:

1. The basis on which a license was issued;
2. The date of issuance;
3. Whether disciplinary action has been taken against the license; and
4. The current status of the license.

81-012.08 Verification of License Fee: For issuance of a verification of a license, the fee of \$5. The verification includes written confirmation as to whether a license was valid at the time the request was made.

81-012.09 Duplicate License Fee: For a duplicate of original license document or reissued license, the fee of \$10.

81-012.10 Administrative Fee: For a denied license or a withdrawn application, the administrative fee of \$25 will be retained by the Department, except if the licensing fee is less than \$25, the fee will be forfeited and an examination fee will not be returned.

81-012.11 Reinstatement Late Fee: For reinstatement of a license for failure to meet renewal requirements:

1. Within one year, the fee of \$35 in addition to the renewal fee.
2. After one year of revocation, the fee of \$75 in addition to the renewal fee.

81-012.12 Reinstatement Fee: For reinstatement following suspension, limitation or revocation for disciplinary reasons, the fee of \$75.

81-013 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists that a person or entity practiced without a license. Practice without a license for the purpose of this regulation means practice:

1. Prior to the issuance of a license;
2. Following the expiration of a license; or
3. Prior to the reinstatement of a license.

81-013.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without a license:

1. The person admits to engaging in practice;
2. Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;
3. Billing or payment records document the provision of service, care, or treatment by the person;
4. Service, care, treatment records document the provision of service, care, or treatment by the person;
5. Appointment records indicate that the person was engaged in practice; or
6. The person opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.

For purposes of this regulation prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.

81-013.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for practice without a license. To assess such penalty, the Department will:

1. Provide written notice of the assessment to the person. The notice must specify:
 - a. The total amount of the administrative penalty;
 - b. The evidence on which the administrative penalty is based;
 - c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;
 - d. That the Department will within 30 days following receipt of payment of the administrative penalty, transmit the penalty to the State Treasurer for credit to the Permanent School Fund; and
 - e. That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property.
2. Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.

81-013.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920 and 184 NAC 1.

These Amended Regulations Replace Title 172, Chapter 81, Regulations Governing the Practice of Massage Therapy, last effective date April 6, 1999.

Approved by the Attorney General: November 18, 2004
Approved by the Governor: December 29, 2004
Filed with the Secretary of State: December 29, 2004
Effective Date: January 3, 2005